No. 72-483

FEB 1 1973

MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

FRANCIS R. SALAZAR,
Petitioner,

versus

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

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NO. 72-483

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ON PETITION FOR A WRIT OF CERTIORARI
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PETITION FOR REHEARING

The Petitioner herein respectfully moves this Honorable Court for an order (1) vacating its denial of the Petition for a Writ of Certiorari, entered on January 8, 1973, and (2) granting the Petition. As grounds for this motion, Petitioner states the following:

I.

THE INHERENT CHARACTERISTICS OF THE JURY SELECTION AND SERVICE PLAN (JURY SELECTION AND SERVICE ACT OF 1968, PUBLIC LAW 90-274) FOR COLORADO

DENIES PETITIONER AND ALL OTHER INDIVIDUALS A FAIR AND IMPARTIAL TRIAL AS GUARANTEED BY THE FIFTH AND SIXTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES.

The Federal Colorado jury plan is set forth at pages A-1-12, infra. A Colorado Map showing Denver, Pueblo and Grand Junction Divisions of the Colorado Plan for the Random Selection of Grand and Petit Jurors and places where Federal Court shall be held (28 U.S.C. §85) is set forth at page A-13, infra. Although available, this issue was not raised in the Petition for Certiorari, and the issue appears upon the face of the Record herein. Counsel challenged the array (I Tr. 10-21) prior to voir dire by written motion on among other grounds that none of the panel was from Southern Colorado and none were Negro and ". . . the percentage of jurors of Spanish extraction appears to be only seven out of a panel of 78 jurors . . ." (I Tr. 11). 28 U.S.C. §85 provides:

> "Colorado constitutes one judicial district, Court shall be held at Denver, Durango, Grand Junction, Montrose, Pueblo, and Sterling."

The Colorado jury plan purports to divide the counties of the state into three divisions, Denver, Grand Junction and Pueblo. The plan is managed by the Clerk of the Court under the supervision of the Chief Judge, the trial judge herein, who at trial stated that no trials had been held in Grand Junction (Mesa County; I Tr. 15) and that not over five trials had been

held in Pueblo (Pueblo County; I Tr. 16).[1] Consequently, said plan conflicts with the declaration of policy (18 U.S.C. §1861) as to the right of this Petitioner and all other litigants, that:

> "[G]rand and petit judges [shall be] selected at random from a fair cross section of the community in the district or division wherein the court convenes . . ."

and the declaration (18 U.S.C. §1861), that:

> ". . . It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the District Courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose."[2]

1/ The Office of the Clerk of the United States District Court for the District of Colorado advises there are no available statistics as to the number of trials held in the statutory designated places for holding trial in the Colorado judicial district. However, Counsel understands no trials in recent years have been held outside Denver and Pueblo.

2/ Obviously, this policy is frustrated where a negligible number of trials are held outside Denver.

18 U.S.C. §1862 provides:

"No citizen shall be excluded from service as a grand or petit juror in the District Courts of the United States on account of race, color, religion, sex, national origin, or economic status."

At the hearing of post-trial motions, which raised the error that the jury was not representative of the citizens of the State of Colorado (II Appendix 175), the trial court acknowledged that the jury panel contained no people from Southern or Western Colorado (Post-Trial Motions and Sentencing Tr. 85).[3] Further, the trial court acknowledged.

". . . I think we know probably that at least within the San Luis Valley and Southern Colorado right down the east slope there are large or relatively large percentage of Spanish-American people, so we would expect a larger number drawn from that area of Spanish-Americans than we would have right here, although we have a substantial number in this area . . ." (P-T Tr. 85)

18 U.S.C. §1863 provides:

"Each United States district court shall devise and place into operation a written plan for random selection of grand and petit jurors that shall be designed to

3/ Further reference to this transcript will be P-T Tr. and appropriate page number.

> achieve the objectives of sections 1861 and 1862 of this title, and that shall otherwise comply with the provisions of this title . . . . "

However, the Colorado Plan does not achieve the objectives of 18 U.S.C. §§1861 and 1862 because of the complete absence of trials in Grand Junction, Montrose and Durango and the negligible number of trials in Pueblo and therefore not only are a very large number of Spanish surnamed excluded from jury service but for all practical purposes all citizens from forty Colorado counties (out of a total of sixty-three) are excluded from jury service.

The Colorado Plan specifies the names of prospective jurors shall be selected from the voter registration lists (pg.A-2, infra) as is permitted by 28 U.S.C. §1863(b)(2), but does not comply with the provision of said section, that:

> ". . . The plan shall prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured by sections 1861 and 1862 of this title. . . "[4]

4/ The only relevant provision being ". . . Where necessary, on direction of the Chief Judge, from the voter list or city directories or telephone books.", no provision being made for selection from said sources <u>where necessary</u> ". . . to foster the policy and protect the rights secured by Sections 1861 and 1862 of this title. . . .", the matter of

28 U.S.C. §1863(b) (5), requires each Jury plan to:

> "Specify those groups of persons or occupational classes whose members shall, on individual request therefor, be excused from jury service. Such groups or classes shall be excused only if the district court finds, and the plan states, that jury service by such class or group would entail undue hardship or extreme inconvenience to the members thereof, and excuse of members thereof would not be inconsistent with Sections 1861 and 1862 of this title."

The Colorado Plan fails to comply with this statute in that the District Court's finding that jury service by the list of classes or groups of persons listed at pages A-5, A-6, infra, ". . . . would entail undue hardship or extreme inconvenience to the members thereof . . ." is wholly arbitrary as to (3) women who have legal custody of a child or children under the age of 10 years (page A-5 infra); (7) sole proprietors of businesses (page A-6 infra); and, (11) persons who do not have transportation available to attend court

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4/(cont'd.)
selection from said other sources being solely left to the arbitrary discretion of the Chief Judge.

sessions,[5] as the exclusion of said groups and classes on individual requests without any actual showing of undue hardship or extreme inconvenience frustrates the policy of 18 U.S.C. §1861 of a defendant's right to a jury representing ". . . a fair cross section of the community . . ." and the "obligation" of citizens ". . . to serve as jurors when summoned for that purpose" and inherently provides for discrimination as to sex (women with children under 10 years of age) and economic status of citizens (sole proprietors of businesses) in violation of 18 U.S.C. §1862.

The plan also fails to comply with the provisions of 28 U.S.C. §1863(b)(8) providing for the fixing of the time ". . . when the names drawn from qualified jury wheel shall be disclosed to parties and to the public . . . ." and further no provision is made for the time when names are to be disclosed to the "parties".[6]

The Colorado Plan's practical effect of excluding a large percentage of Spanish-American

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5/ Spanish named people are apt to be Catholic and poor which means they would be more likely to have small children and no automobile and especially a second automobile for a wife. Paragraph 11 would evidently apply even if a person lived within walking distance of the court house.

6/ See page A-β, infra, "QUALIFIED JURY WHEEL". Further any disclosure to the parties is within the sole arbitrary discretion of the Chief Judge and the plan thereby fails to provide for "notice" as required by due process of law.

citizens as well as all other citizens in forty of the state's sixty-three counties from jury service clearly deprives Petitioner and all other litigants in Federal Court in Colorado of due process of law as guaranteed by the Fifth Amendment and trial by an impartial jury as guaranteed by the Sixth Amendment, and said plan's inherent failure to comply with the Jury Selection and Service Act of 1968 highlights said constitutional issues and raises questions of great importance involving the due administration of justice in the Colorado Federal District Court. Either a Petition for Rehearing should, in all due respect, be granted on these constitutional issues or the case remanded under appropriate instructions to permit further development of the issues.

II.

THE INTERVENING CONFLICTING DECISION OF UNITED STATES VS. ACREE, 466 F.2d 1114 (10th CIR., AUG. 22, 1972) IS OF SUBSTANTIAL OR CONTROLLING EFFECT.[7]

The case herein, United States vs. Cooper, 464 F.2d 648, was decided July 12, 1972, wherein the Court placed great emphasis on the source of funds for repayment of the Cooper-Alpert loan (Petition for Certiorari, No. 72-483, pages A-5, 6) although it stands admitted that the Cooper-Alpert loan was fully paid (Pet. for

7/ Although decided on August 22, 1972, this case was not reported until November 27, 1972, and not previously brought to this Court's attention.

Cert., page A-6), plus $4,161.66 interest, charged and paid at the going legal rate.

In the opinion of United States vs. Acree, 466 F.2d 1114 (10th Cir.) decided approximately forty days after the Cooper case, supra, on August 22, 1972, the Court stated:

> ". . . The Government charged that the misapplication of funds or credits came about by reason of the forgiving of interest on these loans by the bank, or by the application against the loan balance to be paid off by defendant of interest credited on the bank books to current income. . ."

Thus, in Acree, the failure to pay interest was a claimed "misapplication" whereas in Cooper, the bank made a profit of $4,161.66 in interest on the Count V (Cooper-Alpert) loan transaction, a financially sound loan transaction at the time same was made and still a criminal misapplication was found.

In Acree, supra, the Court stated:

> ". . . The offense occurred and was complete when the misapplication took place. What might have happened later as to repayment is not material and could not be a defense. . . ." (466 F.2d 1118)

Yet, in Cooper, Supra, the source of funds for repayment of the Cooper-Alpert loan, admittedly a legitimate loan, was used by the Government and approved by the Tenth Circuit Court to sustain Petitioner's conviction. As to the

legality of The Rocky Mountain Bank making a loan directly to its directors, including Petitioner and his co-defendants, the trial court noted that ". . . It is not criminal to do it, in other words . . ." (XII Tr. 2306).[8] Acree, supra, being a later decision than Cooper, supra, stands for the proposition that the offense occurs and is ". . . complete when the misapplication took place . . . .", which, in the Cooper case, was at the time the loan was made to Cooper-Alpert, which loan was financially sound and made to real and financially responsible individuals, which loan would not have been criminal in the trial court's own words had it been made directly to Petitioner and his co-defendants. None of the various transactions involved which were the source of obtaining funds for the repayment of the Cooper-Alpert loan and interest, were charged as criminal misapplications, and yet these very transactions were used to sustain Petitioner's conviction as to a loan transaction which was otherwise perfectly legitimate.

As to the necessity of a "loss" or lack thereof to the bank, the Court in Acree at 466 F.2d 1118 states:

8/ For repeated statements by the trial court acknowledging the legitimacy of the Count V loan to Cooper-Alpert in the first instance with transcript references, see page 2, REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION.

> "The provisions of 18 U.S.C. §656 makes no mention of loss to the bank or causing loss, although it expressly covers embezzlement and purloining. . . ."

Clearly, "embezzlement and purloining" requires a "loss" as "conversion" is an essential element of these offenses. Further, "conversion" is the distinguishing characteristic between acts of maladministration and acts of criminal misapplication (United States vs. Britton, 107 U.S. 655, 27 L.Ed. 520, 2 S.Ct. 512 (1882). The "loss" need not be permanent but it at least must be momentary, and whereas in Cooper, supra, the loan was made to financially substantial individuals and is admittedly financially secure and sound and they laid their credit on the line as to the repayment of same, the payment of loan proceeds to them does not amount to a "conversion" regardless of their ultimate use of the proceeds.

Acree, supra, cites United States vs. Fortunato, 402 F.2d 79 (2nd Cir.); Golden vs. United States, 318 F.2d 357 (1st Cir.), and Benchwick vs. United States, 297 F.2d 330 (9th Cir.) for the proposition that a criminal misapplication requires no "loss". On the other hand, Chief Judge Friendly in United States vs. Docherty, ____F.2d____ (Slip Op. 293; 2nd Cir., Oct. 31, 1972), as to the element of defrauding (conversion or loss), stated:

> ". . . Indeed, there will be no damages at all from the transactions in which Docherty took part, if, so far as the record shows, the notes are collectible.

> Beyond this we are by no means convinced that, when Congress speaks of intent to defraud in a criminal statute, it means merely the attitude of mind that would support a civil action. . ." (Slip Op. 303)

Chief Judge Friendly further stating in reversing Docherty's conviction as to loans made in his own name the proceeds of which were reloaned to Evans, that as to Docherty ". . .[I]t is not suggested that he [Docherty] lacked the means to repay." Cf. United States vs. Matot, 146 F.2d 197 (2nd Cir., 1944). At the time the loan was made to Cooper-Alpert, the loan was financially good and well secured by their financial responsibility and Alpert at trial acknowledged his liability for repayment of same. Consequently, the making of said loan did not constitute a conversion or even amount to a momentary loss to the bank. Acree's holding that a "loss" is not necessary also conflicts with United States vs. Matsinger, 191 F.2d 1014, 1017 (3rd Cir., 1951), where the Court held:

> ". . . To show misapplication of funds with intent to defraud it was necessary to show losses. . . ."

which, as applied here, means a loss as to the Cooper-Alpert loan transaction, which to the contrary showed a profit of in excess of $4,000.00. In United States vs. Martindale, 146 F. 280, 282 (D.C. Kans., 1903), the Court stated:

". . . It has been expressly ruled by the Court of Appeals of this circuit that to complete the misapplication of the funds of a bank it is necessary that the fund should be withdrawn from the possession or control of the bank, or a conversion thereof in some form should occur, so that the bank loses the same. Dow et al. v. United States, 82 Fed. 904, 27 C. C. A. 140, 49 U. S. App. 605; Mohrenstecher et al. v. Westervelt, 87 Fed. 157, 30 C. C. A. 584, 57 U. S. App. 618 . . . ."

In Hudson vs. United States, 55 F.2d 591, 593 (8th Cir., 1932), the Court held that misapplication of bank funds ". . . is not established unless it appears that the bank funds have been depleted by the action of the accused. . ." and further, ". . . that there must be a conversion of funds to the use of the defendant. . ."

In United States vs. Archambault, 441 F.2d 281, 283 (10th Cir., 1971), the Court acknowledged:

". . . that when the charge of willful misapplication is made there must be an accompanying allegation that the bank's money, funds or credits were converted to the use of the accused or to some party other than the bank . . ." (Emphasis supplied)[9]

9/ The Superseding Indictment herein contained no allegation whatsoever as to any alleged

Golden vs. United States, supra, relied upon in Acree, supra, makes reference to the lack of the necessity of a "permanent loss" as an element of the offense of criminal misapplication, which does not negate the necessity of at least a momentary loss, a clear characteristic of a "conversion" by the very definition of said term, to-wit:

> "A distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his title or rights therein, or in derogation, exclusion, or defiance of such title or rights. 18 Am J2d Conversion §1. It is an essentially tortious act, an unlawful act, an act which cannot be justified or excused in law . . ." (Ballentine's Law Dictionary, 3rd Ed.)

United States vs. Docherty, supra, was decided subsequent to both the case herein, United States vs. Cooper, supra, and United States vs. Acree, supra. Consequently, the Tenth Circuit Court of Appeals has had no opportunity to consider said cases in the light of Docherty, supra, and the vagueness of 18 U.S.C. §656 is clearly demonstrated by the conflict between the various

9/(cont'd.)

"conversion" of any funds whatsoever (Vol. I, Appendix 62-69), the gist of Count V being Defendants ". . . did cause to be made to their own benefit a loan of $65,000.00 to Harvey Alpert and Michael Cooper and concealed the defendants' interests therein from the bank . . ."

circuits as shown by cases heretofore cited as to the necessity of a loss or lack thereof regardless how momentary as an essential ingredient of the element of "conversion" to the offense of criminal misapplication under 18 U.S.C. §656.

Counsel has just learned from counsel in United States vs. Acree, Sup. No. ____, that a Petition for Certiorari therein was denied on January 22, 1973, and that a Petition for Rehearing is presently under consideration.

The importance of the questions involved in this case, Docherty, and Acree, affects every banker subject to 18 U.S.C. §656 as well as every attorney attempting to interpret said statute. Petitioner herein was a competent lawyer with an excellent character reputation, and Docherty, in United States vs. Docherty, supra, also was an attorney. Docherty ". . . admitted knowledge that the proceeds of the loans [which he applied for] were going into Evans' hands in violation of the bank's internal rules . . ." (Slip Op. 298) and it further appeared that the New York Banking Law §103-8 placed rather stringent restrictions upon a bank's lending of money to any executive officer, (Slip Op. 298 n. 3). On the other hand, neither direct nor indirect loans to executive officers or directors of Colorado state banks is prohibited, the trial judge herein stating as to loans to directors ". . . It is not criminal to do it, in other words . . ." (XII Tr. 2306). Tronolone, also an attorney in a case related to United States vs. Docherty, supra, found himself in circumstances somewhat similar to Docherty and became the unfortunate victim of Edward

Evans, the banker involved in United States vs. Docherty, but pled guilty to aiding and abetting Evans, thereby suffering a one-year probated prison sentence and suspension from the practice of law for a period of six months (Tronolone vs. Bar Ass'n of Erie County, 337 N.Y. S.2d 65 (Nov. 2, 1972)). These are but three isolated instances of attorneys becoming enmeshed in the confusion of 18 U.S.C. §656, but the trend is clear that the scope or outer limits of 18 U.S.C. §656 is dependent upon the variant views of the various circuits, Docherty goes free and Petitioner stands convicted, and, for that matter in United States vs. Karsten, Criminal Action No. 71-CR-317 Colorado United States District Court, Karsten was involved in the identical type of loan transactions as was the Cooper-Alpert loan transaction, except the borrowers in Karsten were not nearly as financially responsible nor the loan nearly as secure as was the Cooper-Alpert loan. Karsten was acquitted as a matter of law.[10] Petitioner being tried before a different Colorado District Judge was denied a motion for a judgment of acquittal and convicted on an analogous, identical type of loan transaction as to which Karsten was acquitted. Petitioner's conviction in the light of reversal of Docherty's conviction and Karsten's acquittal as a matter of law does not comport

10/ United States vs. Karsten is discussed at pages 24-25 of the Petition for a Writ of Certiorari herein (No. 72-483) and at page 8 of the Supplement to the Petition for a Writ of Certiorari herein (No. 72-483).

with the administration of equality of justice as conviction or acquittal should not be dependent upon differing interpretations of the same criminal statute depending upon the particular circuit or variant views of different district judges within the same judicial district, as under such circumstances, uniformity in the administration of Federal criminal laws is completely destroyed.

Petition would respectfully adopt and incorporate herein by reference arguments presented by his co-petitioners herein as additional grounds for granting a Petition for Rehearing.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court give due consideration to the granting of a Rehearing and the vacation of the Court's Order Denying the Petition for a Writ of Certiorari and the granting of said Petition and, in any event, that the Court remand the case with appropriate instructions for reconsideration by the United States Court of Appeals for the Tenth Circuit or the United States District Court for the District of Colorado, as the Court deems proper and that Petitioner have such other, further or additional relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58(2).

*

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of January, A.D., 1973 three copies of the PETITION FOR REHEARING by Petitioner, Francis R. Salazar, were mailed, postage prepaid, to Erwin N. Griswold, Solicitor General, Department of Justice, Constitution Avenue and Tenth Street N.W., Washington, D.C. 20530, Counsel for the Respondent. I further certify that all parties required to be served have been served.

*

Counsel for Petitioner

*Manuscript Signature per Rule 58(2) appears on original.

APPENDIX

PLAN OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS

Pursuant to the Jury Selection and Service Act of 1968, Public Law 90-274 the following Plan is hereby adopted by the Court subject to approval by a reviewing panel and to such rules and regulations as may be adopted from time to time by the Judicial Conference.

APPLICABILITY OF PLAN

The District of Colorado is hereby divided into divisions for jury selection purposes, pursuant to section 1869 (e) of the Act, as follows:

DENVER DIVISION, consisting of the counties of:

Adams	Gilpin	Phillips
Arapahoe	Grand	Sedgwick
Boulder	Jefferson	Summit
Chaffee	Lake	Teller
Clear Creek	Larimer	Washington
Denver	Logan	Weld
Douglas	Morgan	Yuma
Elbert	Park	

GRAND JUNCTION DIVISION, consisting of the counties of:

Archuleta	Hinsdale	Montrose
Delta	Jackson	Ouray
Dolores	La Plata	Pitkin
Eagle	Mesa	Rio Blanco
Garfield	Moffat	Routt
Gunnison	Montezuma	San Juan
		San Miguel

and PUEBLO DIVISION, consisting of the counties of:

Alamosa	Custer	Lincoln
Baca	El Paso	Mineral
Bent	Fremont	Otero
Cheyenne	Huerfano	Prowers
Conejos	Kiowa	Pueblo
Costilla	Kit Carson	Rio Grande
Crowley	Las Animas	Saguache

MANAGEMENT OF THE PLAN

This Plan shall be managed by the Clerk of the Court under the supervision and control of the Chief Judge or in his absence or inability to perform his duties as such, the District Judge who is present, in the District and who is next in precedence shall perform such duties.

RANDOM SELECTION FROM VOTER LISTS

Voter registration lists represent a fair cross section of the community in the District of Colorado. Accordingly, names of grand and

petit jurors serving on or after the effective date of this plan shall be selected at random from the voter registration lists of all the counties within the relevant division. Where necessary, on direction of the Chief Judge, from the voter list or city directories or telephone books.

The selection shall be accomplished by drawing a starting number by lot and, commencing therewith on the voter registration list of each county in the division, selecting that name with the remaining names to be selected in multiples as ordered by the Chief Judge to produce the number of names required for the Master Jury Wheel. If, for example, the starting number drawn at random was number 25 and the ordered multiple was 50, the names selected in each county would be numbers 25, 75, 125 and so on throughout the county's voter registration list.

MASTER JURY WHEELS: The Clerk shall maintain a master jury wheel for each of the divisions within the district; he shall also maintain a Grand Jury wheel for the district. The names of all persons randomly selected from the voter registration lists of the counties in a division shall be placed in the master jury wheel for that division. The minimum number of names to be placed initially in these master jury wheels shall be as follows:

1) Denver Jury Division. Four Thousand names or at least one-half of one per cent of the total registered voters for the designated counties, whichever is the greater.

2) Pueblo Jury Division. One Thousand names or at least one-half of one per cent of the total registered voters for the designated counties, whichever is the greater.

3) Grand Junction Jury Division. One Thousand names, or at least one-half of one per cent of the total registered voters for the designated counties, whichever is greater.

The Chief Judge may order additional names to be placed in the Master Jury Wheels from time to time as necessary.

Names shall be obtained for the Grand Jury Wheel from the three Qualified Jury Wheels of the respective divisions on a pro rata basis.

The Master Jury Wheel for the Denver Jury Division shall be emptied and refilled as herein provided between March 1 and September 30 in every odd numbered year beginning in 1971.

The Master Jury Wheels for the Pueblo and Grand Junction Jury Divisions shall be emptied and refilled as herein provided every three years between March 1 and September 30 beginning in 1972.

COMPLETION OF JUROR QUALIFICATION FORM

The Clerk shall mail to every person whose name is so drawn a juror qualification form, with instructions to fill out and return the form, duly signed, and sworn to, by mail within 10 days as provided by §1864.

In any case in which it appears that there is an omission, ambiguity, or error in a form,

the clerk shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form within ten days.

Any person who fails to return a completed juror qualification form as instructed, after further notice from the Clerk, may be summoned, on direction of the Chief Judge, by the Clerk to appear forthwith before the Clerk to fill out the qualification form.

EXCUSES ON INDIVIDUAL REQUEST

The district court hereby finds that jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience to the members thereof, and the excuse of such members will not be inconsistent with the law, and shall be granted upon individual request:

1) Persons over 70 years of age.

2) Actively engaged members of the clergy.

3) Women who have legal custody of a child or children under the age of 10 years.

4) Actively practicing attorneys, physicians, dentists, and registered nurses.

5) Persons who have served as a grand or petit jury in a state or federal court within the past two years.

6) School teachers in public, parochial, or private schools actively teaching.

7) Sole proprietors of businesses.

8) Any person who resides more than 100 miles or two hours travel time from the place of holding court if called to serve on a petit jury.

9) Any person who resides more than 40 miles from the place of holding court if called to serve on a grand jury.

10) Persons who have the sole care of others who are under disability.

11) Persons who do not have transportation available to attend court sessions.

EXEMPTION FROM JURY SERVICE

The district court hereby finds that exemption of the following groups of persons of occupational classes is in the public interest and would not be inconsistent with the Act, and accordingly members of such groups are barred from jury service:

1) Members in active service in the Armed Forces of the United States.

2) Members of the fire or police departments of any State, district, territory, possession or subdivision thereof.

3) Public officers in the executive, legislative, or judicial branches of the Government of the United States, or any State, district, territory or possession or subdivision thereof, who are actively engaged in the performance of official duties. Public officer shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office.

DETERMINATION OF QUALIFICATIONS, EXCUSES, AND EXEMPTIONS

(a) The Chief Judge on his initiative or upon recommendation of the clerk shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided on the juror qualification form and the alphabetical list of names drawn from the master jury wheel. If a person did not appeal in response to a summons, such fact shall be noted on said list.

(b) In making such determination the Chief Judge shall deem any person qualified to serve on grand and petit juries in the district court unless he -

(1) is not a citizen of the United States twenty-one years old who has resided for a period of one year within the judicial district;

(2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(3) is unable to speak the English language;

(4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

QUALIFIED JURY WHEEL. The Clerk shall maintain separate qualified jury wheels for each division in the district, and shall place in such wheels the names of all persons drawn from the master jury wheel and not disqualified, exempt, or excused pursuant to this Plan. He shall insure that at all times at least 300 names are contained in each such wheel. Names drawn from the qualified jury wheel shall not be made public until the panel of jurors have been summoned and have appeared at the courthouse provided that the Chief Judge may order the names made public at an earlier date, or to be kept confidential in a case or cases when the interests of justice so require.

ASSIGNMENT TO PANELS

The panel of jurors summoned as petit jurors shall report in the jury assembly room. When a petit jury pool is used their names shall be placed in a jury wheel and shall be drawn therefrom at random in the number required by each of the respective judges holding court. Those so drawn shall report in that judge's courtroom. Those not selected to serve on a case, "left-over" jurors, shall return to the jury assembly room to be available for further assignment or to be excused on Order of the Chief Judge.

GRAND JURY PANEL

Names of persons for grand jury panels shall be publicly drawn at random from the Qualified Grand Juror Wheel of the District of Colorado as directed by the Chief Judge. Names placed in this wheel shall be obtained from the three Qualified Juror Wheels of the respective divisions on a pro rata basis.

JUROR QUALIFICATION FORM

The Jury Qualification Form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States shall be used.

Pending the approval of a proper form by the Judicial Conference of the United States, the attached unofficial questionnaire shall be used.

EFFECTIVE DATE: This Plan shall become effective after approval by the reviewing panel of the Judicial Council of the Tenth Circuit at such time thereafter as the panel shall direct.

DATED at Denver, Colorado, this 3rd day of September, 1968.

BY THE COURT:

s/Alfred A. Arraj
ALFRED A. ARRAJ,
Chief Judge

s/Hatfield Chilson
HATFIELD CHILSON,
Judge

s/William E. Doyle
WILLIAM E. DOYLE,
Judge

JULY TERM, WEDNESDAY,
SEPTEMBER 18th, 1968.

Before Honorable Alfred P. Murrah, Chief Judge, Honorable David T. Lewis, Honorable Jean S. Breitenstein, Honorable Delmas C. Hill, Honorable Oliver Seth, Honorable John J. Hickey, Circuit Judges, and Honorable Alfred A. Arraj, Chief Judge, United States District Court for the District of Colorado.

IN THE MATTER OF)
)
JURY SELECTION PLAN)

Upon consideration of the Jury Selection Plan submitted by the United States District Court for the District of Colorado, pursuant to 28 USCA Section 1863(c), it is ordered that the plan (as amended) submitted by the United States District Court for the District of Colorado be and is hereby approved.

s/Alfred P. Murrah
Chief Judge

s/David T. Lewis
Circuit Judge

s/Jean S. Breitenstein
Circuit Judge

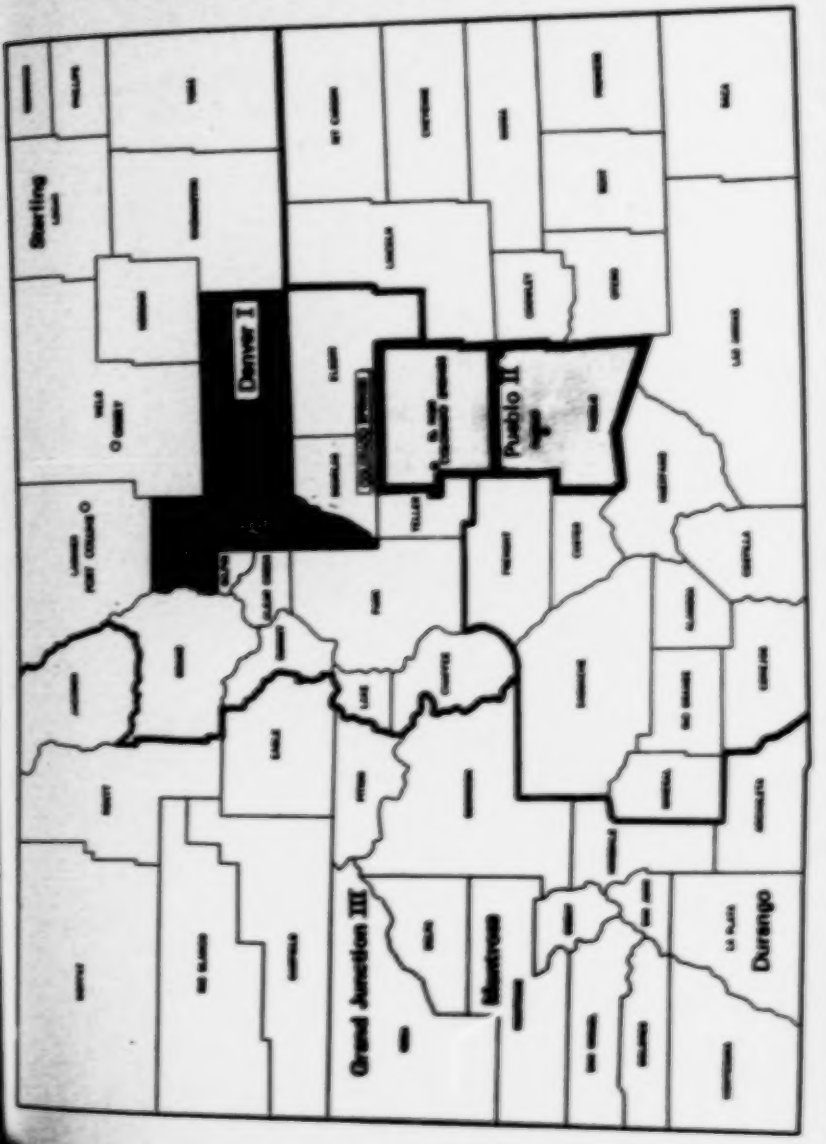
s/Delmas C. Hill
Circuit Judge

s/Oliver Seth
Circuit Judge

s/John J. Hickey
Circuit Judge

s/Alfred A. Arraj
Chief Judge, United States District Court, District of Colorado

Map of Colorado showing Denver (I), Pueblo (II) and Grand Junction (III) Colorado Plan jury divisions and location of places where Federal Court "shall" be held (18 U.S.C. §85).



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